

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 14 July 2016

**Public Authority:** Ministry of Justice  
**Address:** 102 Petty France  
London  
SW1H 9AJ

#### Decision (including any steps ordered)

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1. The complainant requested the names of individuals appointed by the Secretary of State to each Independent Monitoring Board for each prison and Young Offenders Institution. The Ministry of Justice (the 'MOJ') refused to provide the requested information, citing section 40(2), the exemption for personal information, of FOIA.
2. The Commissioner's decision is that the MOJ has correctly relied on section 40(2) in relation to this request. He does not require the MOJ to take any steps.

#### Background

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3. Independent Monitoring Boards ('IMBs') are committees of volunteers appointed by the Secretary of State under the Prisons Act 1953, to monitor the conditions in England's prisons and immigration detention and removal centres. Any member of the public may apply to volunteer and there are no qualification requirements. Only highly limited restrictions on eligibility exist, as set out by the statutory instrument known as The Prison Rules 1999. (Useful details can be found at the link below).<sup>1</sup>

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<sup>1</sup> <http://www.bristol.ac.uk/media-library/sites/law/migrated/documents/independentmonitoringboards.pdf>

4. There are 1472 named individuals currently serving as IMB members. The Commissioner understands that the corpus of IMB volunteers is overwhelmingly composed of ordinary members of the public with a keen interest in and commitment to the welfare of prisoners. They are not paid employees. They have no hierarchy of staff under their control, and have no seniority to direct individuals or resources.
5. IMB Members are able to access their particular prison and to exercise considerable day-to-day autonomy in carrying out their monitoring function, although they have no control as to the outcome of that monitoring. Instead, any concerns are communicated to prison staff and the Secretary of State who decide whether, and if so when, to act upon any matters raised.

### **Request and response**

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6. On 8 March 2016 the complainant wrote to the MOJ and requested information in the following terms:

*"I must ask you directly now to release to me please, for each prison and YOI, the names of those who are currently appointed by the Secretary of State to each Independent Monitoring Board."*

7. The MOJ responded on 24 March 2016. It stated that sections 38 (health and safety) and 40(2) (personal information) applied to the requested information and refused to provide it on that basis.
8. Following an internal review the MOJ wrote to the complainant on 19 April 2016. It stated that it no longer wished to rely on section 38, but maintained that section 40(2) applies.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 20 April 2016 to complain about the way his request for information had been handled.
10. The Commissioner has considered whether the MOJ has properly relied on section 40(2) in relation to this request.

### **Reasons for decision**

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11. The MOJ cited section 40(2), which provides an exemption for information that is the personal data of an individual aside from the

requester, and where the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exemption is a two-stage process. First, the information must constitute the personal data of a third party and, secondly, disclosure of that personal data must be in breach of at least one of the data protection principles.

12. The definition of personal data is given in section 1(1) of the Data Protection Act 1998 ('DPA') as follows:

*"'personal data' means data which relate to a living individual who can be identified-*

*(a) from those data, or*

*(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller".*

13. The withheld information consists of the names of IMB Members; this clearly both identifies and relates to individuals other than the complainant. That information is, therefore, the personal data of those individuals according to section 1(1) of the DPA.
14. The next step is to consider whether disclosure of the names of those IMB individuals would be in breach of any of the data protection principles. The Commissioner has focussed here on the first data protection principle, which requires that personal data is processed fairly and lawfully, and in particular on whether disclosure would be, in general, fair.
15. In forming a conclusion on this point, the Commissioner has taken into account what the reasonable expectations of the data subjects would be, as well as any consequences that disclosure may have for them. He has also considered whether there is any legitimate public interest in the disclosure of this information.
16. The MOJ has explained that although Members of IMBs are public appointees it cannot reasonably be said that they, having applied for and accepted appointment, have entered into 'public life'. They continue to live private lives and would not expect to be subject to the glare of publicity as a consequence of their appointment. They are volunteers, often retirees, who are committed to maintaining high standards in prisons and they have a reasonable expectation that they may exercise their own control over whether or not they wish to be identified publicly as volunteers. As such, the MOJ argued that disclosure of the volunteers' identities would deprive them of this control and thereby be unfair.

17. The MOJ explained that several Members have legitimate security concerns about providing their full names on their name badges, primarily linked to the category of prison to which they are assigned. It explained the different categories, ranging from A, which accommodate those who, if they escaped, would be highly dangerous to the public or national security, through to D which accommodate those prisoners who can reasonably be trusted not to try to escape. It also added that the very highest security prisons require Counter Terrorism Clearance (a level of security clearance provided by the Security Services) and stated:

*"We regard it as an individual choice for members, based on whether they feel secure in doing so, to disclose their full identities within the prison premises they monitor".*

18. Whilst he has no evidence to suggest that disclosure would result in volunteers being subjected to a "glare of publicity", he does accept that disclosure under FOIA is effectively an unlimited disclosure to the public at large, without conditions, and as unpaid volunteers the Members would have no reasonable expectation that their names would be disclosed. Their decision as to whether or not they display their names is currently a personal one and as such they would not reasonably expect the MOJ to release their full details into the public domain. The Commissioner therefore concludes that disclosure would be unfair.
19. Whilst section 40(2) is not a qualified exemption in the same way as some of the other exemptions in Part II of FOIA, it is necessary for there to be a public interest element for disclosure to be compliant with the first principle. Therefore, despite the reasonable expectations of individuals, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure. The question here is whether any legitimate public interest in disclosure outweighs the factors against disclosure covered above.
20. Both the MOJ and the Commissioner have considered the complainant's legitimate interests against the rights and freedoms or legitimate interests of IMB Members to conduct their voluntary activities. Both regard it as a decision for individual IMB Members to choose whether they wish to engage with the media and have their names in the public domain.
21. The complainant raised a number of arguments in support of his view that the names of the IMB Members be disclosed, which the Commissioner in turn has raised with the MOJ. He claimed that an article written under the pseudonym of Daisy Mallet about whistleblowing details that the IMB Chair of HMP Hollesley Bay wears a name badge showing her full name when inside the prison.

22. As explained above, there is no requirement for IMB Members to wear name badges. Whilst several Members do wear a name badge, it frequently only includes their first name; in addition several Members have legitimate security concerns about providing their full names on name badges. It is an individual choice for each IMB Member as to how much information they wish to disclose about themselves at the prison they monitor. Equally, a situation in which a Member chooses to make their name known to inmates and prison staff, for the purpose of assisting in carrying out their statutory duties, is clearly different to their identities being disclosed to the public at large, which would be the effect if disclosed under FOIA. Of particular note in the example cited by the complainant, is that HMP Hollesley Bay is a category D prison which is considered to fall into the lowest security class thereby carrying less associated risk to those Members who volunteer there. Therefore, if it is the case that that Member chose to display her name, then she was obviously 'comfortable' enough to do so under her specific circumstances.
23. The complainant also argued that the names should be disclosed because names of prison governors are published. However, the Commissioner agrees with the MOJ that governors are paid senior officials with a wide range of statutory powers under the Prisons Act 1953, and would therefore, have an expectation that their identities would be in the public domain. Were the Members paid employees then the Commissioner believes that they would have different expectations and his conclusion may then be different.
24. The complainant also contended that as three prisons in Northern Ireland publish the names of IMB Members in their annual reports, the same should follow for English Board Members. In response, the MOJ has advised that as its Secretariat is not responsible for the administration of and support for IMBs in Northern Ireland, it is in a limited position to comment upon this argument. The Commissioner does not know, but it may be the case that these Members have been previously advised that this would be the case when appointed or they may each have been approached and given consent. The Commissioner therefore concludes that this argument carries little weight.
25. Finally, the complainant contended that as IMB work with other independent inspectorates that monitor all prisons, police custody, immigration detention, secure mental hospitals and other forms of detention in England, Northern Ireland, Scotland and Wales (known as the National Preventative Mechanism or 'NPM'), and that the names of others who form part of the NPM are known, then the IMB Members names should also be disclosed.

26. In response, the MOJ has argued that it cannot address this general point as it discloses no analogous role where disclosure is routine. It said that the complainant had not identified any similar volunteer based organisation where those volunteers are known publicly and are subject to personal scrutiny for their activities as volunteers. Its view is that the requested information is most comparable to requesting the names of every civil servant with a very junior ranking within the MOJ.

### *Conclusion*

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27. Taking all the above arguments into account, the Commissioner has concluded that the names/identities of IMB Members constitute their personal data and he is of the view that any legitimate interest in their disclosure is substantially outweighed by the public interest in withholding their identities.

## Right of appeal

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28. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

29. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed** .....

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**